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14
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16
17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA

20
21 DARIUS ESTERS, individually and as)
22 a successor of MAURICE ESTERS,) CASE NO. _____
23 by and through his guardian ad)
24 litem, Alisha Hughes; MAURIANA)
ESTERS, individually and as a)
successor of MAURICE ESTERS,)
by and through her guardian ad)
litem, Carla Renee National,) COMPLAINT FOR DAMAGES
Plaintiffs,)
(42 U.S.C. Section 1983)
vs.)
CITY OF OAKLAND, a municipal) JURY TRIAL DEMANDED
corporation; MICHAEL YOELL,)
individually and in his capacity)
as a Sergeant of Police for the)
City of Oakland; A. CENTENO,)
individually and in his capacity)
as a Police Officer for the City)
of Oakland, DOES 1-100, inclusive,)
Defendants.)

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COMPLAINT

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JURISDICTION

1. This action arises under 42 U.S.C. Section 1983.

Jurisdiction is based on 28 U.S.C. Sections 1331 and 1343.

INTRADISTRICT ASSIGNMENT

2. The claims alleged herein arose in the City of Oakland, State of California. Therefore, venue and assignment lies in the United States District Court for the Northern District of California, San Francisco Division. 28 U.S.C. Section 1391(b)(2)

PARTIES

3. The Decedent, MAURICE ESTERS (hereinafter, the Decedent), was an African American male and was the father of the minor Plaintiffs, DARIUS ESTERS and MAURIANA ESTERS. The Decedent was shot and killed by members of the CITY OF OAKLAND Police Department on or about July 4, 2000, and died as a result thereof in Oakland, California.

4. Plaintiff, DARIUS ESTERS, is the minor son of the Decedent, MAURICE ESTERS, and is a person with standing to bring the within action for the violation of the Decedent's constitutional rights under 42 U.S.C. Section 1983 as a successor of the Decedent pursuant to California Code of Civil Procedure Section 377.60. Plaintiff, DARIUS ESTERS, by and through his guardian ad litem, Alisha Hughes, does hereby bring this action on his own behalf and as a successor in interest of MAURICE ESTERS pursuant to California Code of Civil Procedure Section 377.60.

1 5. Plaintiff, MAURIANA ESTERS, is the minor daughter of
2 the Decedent, MAURICE ESTERS, and is a person with standing to bring
3 the within action for the violation of the Decedent's constitutional
4 rights under 42 U.S.C. Section 1983 as a successor of the Decedent
5 pursuant to California Code of Civil Procedure Section 377.60.
6 Plaintiff, MAURIANA ESTERS, by and through her guardian ad litem,
7 Carla Renee National, does hereby bring this action on her own behalf
8 and as a successor in interest of MAURICE ESTERS, pursuant to
9 California Code of Civil Procedure Section 377.60.

10 6. Defendant CITY OF OAKLAND is, and at all times herein
11 mentioned was, a municipal corporation duly organized and existing
12 under the laws of the State of California.

13 7. Defendant RICHARD WORD (hereinafter, Defendant WORD),
14 is, and at all times herein mentioned was, the Chief of Police for
15 the CITY OF OAKLAND. Defendant WORD is sued in his individual and
16 official capacities. At all times mentioned herein, Plaintiffs are
17 informed and believe and thereon allege that Defendant WORD was the
18 policy-maker for Defendant CITY OF OAKLAND on the matters alleged
19 herein related to the customs, policies, practices, of the CITY OF
20 OAKLAND Police Department, including, but not limited to, customs,
21 policies and practices related to the training, supervision, hiring
22 and discipline of police officers and with respect to the management
23 and supervision of the CITY OF OAKLAND Police Department. Defendant
24 WORD is sued herein in his official and individual capacities.

1 8. Defendant MICHAEL YOELL (hereinafter Defendant YOELL)
2 was at all times herein mentioned, a Police Sergeant for the CITY OF
3 OAKLAND and is sued herein in his individual and official capacities.
4

5 9. Defendant A. CENTENO (hereinafter Defendant CENTENO)
6 was at all times herein mentioned, a Police Officer for the CITY OF
7 OAKLAND and is sued herein in his individual and official capacities.
8

9 10. Plaintiffs are ignorant of the true names and/or
10 capacities of defendants sued herein as DOES 1 through 100,
11 inclusive, and therefore sue said defendants by such fictitious
12 names. Plaintiffs will amend this complaint to allege their true
13 names and capacities when ascertained. Plaintiffs are informed and
14 believe, and upon such information and belief allege, that each of
15 the Doe defendants is legally responsible and liable for the
16 incident, injuries and damages hereinafter set forth, and that each
17 of said defendants proximately caused said incidents, injuries and
18 damages by reason of their negligence, breach of duty, negligent
19 supervision, management or control, battery, violation of
20 constitutional rights, violation of public policy, false arrests, or
21 by reason of other personal, vicarious or imputed negligence, fault,
22 or breach of duty, whether severally or jointly, or whether based
23 upon agency, employment, ownership, entrustment, custody, care or
24 control or upon any other act or omission. Plaintiffs will ask leave
25 to amend this complaint to insert further charging allegations when
such facts are ascertained.

11. In doing the acts alleged herein, Defendants, and each of them, acted within the course and scope of their employment for the CITY OF OAKLAND.

12. In doing the acts and/or omissions alleged herein, Defendants, and each of them, acted under color of authority and/or under color of law.

13. In doing the acts and/or omissions alleged herein, Defendants, and each of them, acted as the agent, servant, employee and/or in concert with each of said other Defendants herein.

STATEMENT OF FACTS

14. On or about July 4, 2000, Plaintiffs are informed and believe and thereon allege that the Decedent, MAURICE ESTERS, fell asleep, was unconscious and/or was non-responsive while in his automobile located in the vicinity of the intersection of 35th Avenue and MacArthur Blvd., in Oakland, California.

15. Plaintiffs are further informed and believe and thereon allege that City of Oakland Police Officers noticed the Decedent asleep or unconscious in his vehicle and approached the vehicle to investigate.

16. Plaintiffs are further informed and believe and thereon allege that when one of the police officers looked into the Decedent's vehicle, he noticed that the Decedent was unresponsive and that there was a revolver on his lap.

17. Plaintiffs are informed and believe and thereon

1 allege that the officer called for back up and other City of Oakland
2 Police Department units began arriving on the scene, including, but
3 not limited to, Defendants YOELL, CENTENO and/or DOES 1-100, and/or
4 each of them.

5 18. Plaintiffs are informed and believe and thereon
6 allege that after additional police units and supervisors arrived on
7 the scene, an order and/or orders were issued to officers not to
8 approach the vehicle or otherwise startle the Decedent because of the
9 potential danger to both the Decedent and to other persons in the
10 area. Plaintiffs are further informed and believe and thereon allege
11 that for approximately thirty minutes or more, the Decedent remained
12 asleep or otherwise unconscious in his vehicle without incident.

13 19. Nevertheless, Plaintiffs are informed and believe and
14 thereon allege that a member of the CITY OF OAKLAND Police Department
15 began firing bean bag rounds at the Decedent's vehicle and that at
16 least one of the bean bags shattered one of the windows of the
17 Decedent's automobile.

18 20. Shortly thereafter, Plaintiffs are informed and
19 believe and thereon allege that the Decedent's vehicle then began to
20 move forward slowly on MacArthur Blvd.

21 21. Plaintiffs are informed and believe and thereon
22 allege that despite previous orders directing officer to not
23 approach the Decedent's vehicle and/or to avoid startling the
24 Decedent, Defendants YOELL, CENTENO and/or DOES 1-100, and/or each

1 of them, began following the Decedent's vehicle on foot with their
2 firearms drawn.

3 22. Thereafter, Plaintiffs are informed and believe and
4 thereon allege that Defendants YOELL, CENTENO and/or DOES 1-100,
5 and/or each of them, unnecessarily and/or in violation of orders,
6 rules, regulations and/or directives, provoked a confrontation with
7 the Decedent and fired their weapons multiple times at the Decedent,
8 killing him. Plaintiffs are informed and believe and thereon allege
9 that the use of lethal force by Defendants YOELL, CENTENO and/or DOES
10 1-100 and/or each of them, was excessive, unnecessary, and/or in
11 violation of rules, orders, regulations and/or other directives of
12 their supervisors and/or of the CITY OF OAKLAND Police Department

13 23. Plaintiffs are informed and believe and thereon
14 allege that Defendants YOELL, CENTENO and/or DOES 1-100, and/or each
15 of them, subjected the Decedent to the use of excessive force because
16 of his race and/or gender in violation of the Equal Protection Clause
17 of the Fourteenth Amendment to the United States Constitution.

18 24. Plaintiffs are informed and believe and thereon
19 allege that the acts and/or omissions of Defendants YOELL, CENTENO
20 and/or DOES 1-100, and/or each of them, were intentional, malicious,
21 oppressive and/or done with reckless, callous and/or conscious
22 disregard for the rights of the Decedent.

23 25. Plaintiffs are further informed and believe and
24 thereon allege that the acts and/or omissions of Defendants YOELL,

1 CENTENO and/or DOES 1-100 and/or each of them, were done with
2 deliberate indifference to the rights of the Plaintiffs.

3 26. Plaintiffs are informed and believe and thereon
4 allege that Defendant CITY OF OAKLAND, including, but not limited to
5 Defendants WORD, DOES 1-100, and/or other high ranking police
6 department officials and/or supervisors, individually and/or acting
7 in concert with one another, were on notice of a repeated pattern of
8 misconduct, including, but not limited to, the use of excessive
9 force, by Defendants YOELL, CENTENO, DOES 1-100, and/or each of them,
10 but failed to take any or appropriate remedial action to stop said
11 conduct prior to the subject incident.

12 27. Plaintiffs are further informed and believe and
13 thereon allege that prior to the subject incident, Defendants CITY
14 OF OAKLAND, WORD and/or DOES 1-100, and/or each of them, were on
15 notice of prior incidents in which Defendant YOELL was alleged to
16 have used excessive force against citizens, including, but not
17 limited to, prior incidents involving the discharge of weapons at
18 citizens. Nevertheless, Defendants CITY OF OAKLAND, WORD and/or DOES
19 1-100, and/or each of them, acting with deliberate indifference,
20 failed to take any or appropriate remedial action, including, but not
21 limited to, remedial training, disciplinary action and/or
22 reassignment, to prevent Defendant YOELL from continuing to subject
23 citizens to excessive force and/or other violations of the
24 constitutional rights.

1 28. Plaintiffs are further informed and believe and
2 thereon allege that Defendant CITY OF OAKLAND, including, but not
3 limited to Defendants WORD, DOES 1-100, and/or other high ranking
4 police department officials and/or supervisors, individually and/or
5 acting in concert with one another, were on notice of a the need for
6 more and/or different training, supervision and/or discipline of
7 Defendants YOELL, CENTENO, DOES 1-100, and/or each of them, but
8 failed to take any or appropriate such action prior to the subject
9 incident.

10 29. Plaintiffs are further informed and believe and
11 thereon allege that Defendant CITY OF OAKLAND, including, but not
12 limited to Defendants WORD, DOES 1-100, and/or other high ranking
13 police department officials and/or supervisors, individually and/or
14 acting in concert with one another, were on notice of a a custom,
15 policy, pattern and/or repeated practice of members of the CITY OF
16 OAKLAND Police Department wherein African American males, such as the
17 Decedent, were subjected to excessive force by members of the CITY
18 OF OAKLAND Police Department, including, but not limited to,
19 Defendants YOELL, CENTENO, and/or DOES 1-100, and/or each of them,
20 but failed to take any or appropriate such action prior to the
21 subject incident.

22 30. Plaintiffs are further informed and believe and
23 thereon allege that they and/or the Decedent suffered the violation
24 of their/his constitutional rights as a result of customs, policies,

1 or practices of the CITY OF OAKLAND , Defendants WORD, DOES 1-100, and
2 each of them, individually and/or acting in concert with one another,
3 including, but not limited to, customs, policies or practices which
4 encouraged, authorized or condoned the use of excessive force which
5 foreseeably resulted in the violation of the rights of the Decedent
6 and/or Plaintiffs.

7 31. Plaintiffs are further informed and believe and
8 thereon allege that they and/or the Decedent suffered the violation
9 of their/his constitutional rights as a result of customs, policies
10 or practices of the CITY OF OAKLAND , Defendants WORD, DOES 1-100,
11 individually and/or acting in concert with one another, including,
12 but not limited to, a custom, policy or practice of failing to
13 identify officers, such as Defendants YOELL, CENTENO, DOES 1-100, or
14 each of them, with frequent and/or excessive histories of the use of
15 force, citizens' complaints and/or other misconduct and of failing
16 to promptly discipline, train and/or reassign said officers to
17 prevent the violation of the constitutional rights of citizens.

18 32. Plaintiffs are further informed and believe and
19 thereon allege that as a result of the CITY OF OAKLAND's policy of
20 deliberate indifference, a custom or practice developed within the
21 Oakland Police Department whereby it was accepted practice for police
22 officers to abide by a "Code of Silence." Under this Code, police
23 officers charged with upholding the law routinely ignored or
24 otherwise failed to report or take action against fellow police

1 officers who engaged in misconduct, including, but not limited to,
2 Defendants YOELL, CENTENO, DOES 1-100 and/or each of them.
3

4 33. Plaintiffs are further informed and believe and
5 thereon allege that Defendants WORD, DOES 1-100, and/or each of them,
6 tacitly or directly ratified, approved, condoned and/or otherwise
7 encouraged a pattern, practice, custom or policy of excessive force,
8 other misconduct and/or civil rights violations by Defendants YOELL,
9 CENTENO, DOES 1-100, and/or each of them.
10

11 34. Plaintiffs are further informed and believe and
12 thereon allege that Defendants WORD, DOES 1-100, and/or each of them,
13 tacitly or directly ratified, approved and/or condoned the shooting
14 of the Decedent in this case and failed to take any or appropriate
15 remedial action in response to this incident despite serious nature
16 of the incident and the loss of life that occurred.
17

18 CLAIMS FOR RELIEF

19 FIRST CLAIM FOR RELIEF

20 (42 U.S.C. SECTION 1983)
(PLAINTIFFS AS SUCCESSORS OF DECEDED MAURICE ESTERS
21 AGAINST DEFENDANTS YOELL, CENTENO, DOES 1-100)
22

23 35. Plaintiffs incorporates by reference and re-
24 alleges herein Paragraphs 1 through 34.
25

26 36. In doing the acts complained of herein, Defendants
27 YOELL, CENTENO, DOES 1 through 100, individually and/or while
28 acting in concert with one another, did act under color of state
29 law to deprive the Decedent as alleged heretofore of certain
30

1 constitutionally protected rights, including, but not limited to:

- 2 (a) the right not to be deprived of liberty without
3 Due Process of Law;
- 4 (b) the right to be free from unreasonable searches
5 and/or seizures;
- 6 (c) the right to be free from pre-trial punishment;
- 7 (d) the right to be free from discrimination based on
8 race and/or gender; and/or
- 9 (e) the right to Equal Protection of the Law.

10 37. Said rights are substantive guarantees under the
11 Fourth and/or Fourteenth Amendments to the United States
12 Constitution.

13 38. As a result of the violation of the Decedent's
14 constitutional rights as alleged herein, Decedent suffered
15 injuries and damages, including, but not limited to, pain,
16 suffering, emotional distress; loss of the enjoyment of life;
17 special damages, including, but not limited to, future income and
18 wage loss; funeral and burial expenses, medical and/or related
19 expenses, interference with his right of society, comfort and
20 affection with the Plaintiffs and other general and special
21 damages to be determined according to proof.

22 39. The acts and/or omissions of Defendants YOELL,
23 CENTENO and/or DOES 1-100 and/or each of them, were intentional,
24 malicious, oppressive and/or done with a conscious, callous

1 and/or reckless disregard for the rights of the Decedent and/or
2 Plaintiffs. Therefore, Plaintiffs pray for an award of punitive
3 damages in amounts to be determined according to proof.
4

5 40. Plaintiffs are also entitled to recover their
6 attorneys' fees and costs pursuant to 42 U.S.C. Sections 1983
7 1988.
8

9 41. As successors of the Decedent, Plaintiffs have
10 standing pursuant to California Code of Civil Procedure Section
11 377.60 to assert this claim for relief.
12

13 WHEREFORE, Plaintiffs pray for relief as hereinafter set
14 forth.
15

16 SECOND CLAIM FOR RELIEF
17

18 (42 U.S.C. SECTION 1983)
19 (PLAINTIFFS INDIVIDUALLY AGAINST
20 DEFENDANTS YOELL, CENTENO, DOES 1-100)
21

22 42. Plaintiffs incorporates by reference and re-
23 alleges herein Paragraphs 1 through 41.
24

25 43. In doing the acts complained of herein,
Defendants YOELL, CENTENO, DOES 1 through 100, individually
and/or while acting in concert with one another, did act under
color of state law to deprive the Plaintiffs, as alleged
heretofore, of certain constitutionally protected rights,
including, but not limited to, the right to continued familial
association, society, comfort, affection, support and
companionship of the Decedent as guaranteed by the First and/or
26

Fourteenth Amendments to the United States Constitution.

44. As a result of the violation of the Plaintiffs' constitutional rights as alleged herein, Plaintiffs suffered and will continue to suffer in the future, injuries and damages, including, but not limited to, loss of comfort, affection, society, support, companionship and familial association of the Decedent, pain, suffering and emotional distress, funeral and burial expenses, medical and/or related expenses, loss of income and/or support, in amounts to be determined according to proof.

45. The acts and/or omissions of Defendants YOELL, CENTENO and/or DOES 1-100 and/or each of them, were intentional, malicious, oppressive and/or done with a conscious, callous and/or reckless disregard for the rights of the Decedent and/or Plaintiffs. Therefore, Plaintiffs pray for an award of punitive damages in amounts to be determined according to proof.

46. Plaintiffs are also entitled to recover their attorneys' fees and costs pursuant to 42 U.S.C. Sections 1983
1988.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

(42 U.S.C. SECTION 1983)

(AGAINST CITY OF OAKLAND, DEFENDANT WORD, DOES 1-100)

47. Plaintiffs incorporate by reference and re-
alleges herein Paragraphs 1 through 46.

1 48. As against Defendant CITY OF OAKLAND and/or
2 Defendant WORD and/or DOES 1-100 in his/their capacity as
3 official policy-maker(s) for the CITY OF OAKLAND and/or in
4 Defendant WORD's individual capacity, the Plaintiffs, and each of
5 them, further allege that the acts and/or omissions alleged in
6 the Complaint herein are indicative and representative of a
7 repeated course of conduct by members of the CITY OF OAKLAND
8 Police Department tantamount to a custom, policy or repeated
9 practice of condoning and tacitly encouraging the use of
10 excessive force and the disregard for the constitutional rights
11 of citizens.

12 49. Plaintiffs are further informed and believes and
13 thereon alleges that the acts and/or omissions alleged herein are
14 the direct and proximate result of the deliberate indifference of
15 Defendants CITY OF OAKLAND, WORD, DOES 1-100, and each of them,
16 to repeated acts of police misconduct which were tacitly
17 authorized, encouraged or condoned by the CITY OF OAKLAND,
18 Defendant WORD, DOES 1-100, and each of them.

19 50. The injuries to the Plaintiffs and/or Decedent
20 were the foreseeable and proximate result of said customs,
21 policies, patterns and/or practices of Defendant CITY OF OAKLAND.
22 Defendant WORD and/or DOES 1-100, and each of them.

23 51. Plaintiffs are further informed and believe and
24 thereon allege that the damages sustained by Plaintiffs and/or

1 the Decedent as alleged herein were the direct and proximate
2 result of municipal customs and/or policies of deliberate
3 indifference in the training, supervision and/or discipline of
4 members of the CITY OF OAKLAND Police Department.

5 52. Plaintiffs are further informed and believe and
6 upon such information and belief allege that the damages and
7 injuries suffered by the Plaintiffs and/or by the Decedent, were
8 caused by customs, policies, patterns or practices of the CITY OF
9 OAKLAND, Defendant WORD, DOES 1-100, and each of them, of
10 deliberate indifference in the training, supervision and/or
11 discipline of Defendants YOELL, CENTENO, DOES 1-100, and/or each
12 of them.

13 53. The aforementioned customs, policies or practices
14 of Defendant CITY OF OAKLAND, Defendant WORD, DOES 1-100, and
15 each of them, resulted in the deprivation of the constitutional
16 rights of the Decedent, including, but not limited to, the
17 following:

18 (a) the right not to be deprived of liberty without Due
19 Process of Law;

20 (b) the right to be free from unreasonable searches and/or
21 seizures;

22 (c) the right to be free from pre-trial punishment;

23 (d) the right to be free from discrimination based on race
24 and/or gender; and/or

(e) the right to Equal Protection of the Law.

54. Said rights are substantive guarantees under the
Fourth and/or Fourteenth Amendments to the United State
Constitution.

55. As the children of the Decedent, Plaintiffs have standing to assert this claim as successors of the Decedent pursuant to California Code of Civil Procedure Section 377.60

56. The aforementioned customs, policies or practices of Defendant CITY OF OAKLAND, Defendant WORD, DOES 1-100, and each of them, resulted in the deprivation of the constitutional rights of the Plaintiffs, including, but not limited to, the right to continued familial association, society, comfort, affection, support and companionship of the Decedent as guaranteed by the First and/or Fourteenth Amendments to the United States Constitution

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

STATEMENT OF DAMAGES

57. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1 through 56.

58. As a result of the acts and/or omissions of Defendants, and each of them, as alleged herein, Plaintiffs, as successors in interest to MAURICE ESTERS, are entitled to recover the damages and injuries sustained by the Decedent, including

1 but not limited to:

2 a. General damages, including, but not limited to,
3 damages for pain, suffering, emotional distress, loss of
4 enjoyment of life, loss of the familial relationship, comfort
5 society, affection and support of the Plaintiffs in amounts to be
6 determined according to proof;

7 b. Special damages, including, but not limited to,
8 damages for future income and lost wages; burial and funeral
9 expenses, medical and/or related expenses in amounts to be
determined according to proof.

10 59. As a result of the acts and/or omissions of
11 Defendants, and each of them, as alleged herein, Plaintiffs
12 incurred damages and injuries including, but not limited to:

13 a. General damages, including, but not limited to,
14 damages for pain, suffering, emotional distress, loss of the
15 familial relationship, comfort, society, affection and support of
16 the Decedent in amounts to be determined according to proof;

17 b. Special damages, including, but not limited to,
18 damages for future income and support; burial and funeral
19 expenses, medical and/or related expenses in amounts to be
20 determined according to proof.

21 60. The acts and/or omissions of Defendants YOELL,
22 CENTENO, DOES 1-100, and/or each of them, were intentional,
23 malicious, oppressive and/or done with a conscious or reckless

1 disregard for the rights of the Decedent and/or Plaintiffs.
2 Accordingly, Plaintiffs pray for an award of punitive and
3 exemplary damages in amounts to be determined according to proof.

4 61. Plaintiffs will also be entitled to an award of
5 attorneys' fees and costs pursuant to statute(s) in the event
6 that they are the prevailing parties in this action under 42
7 U.S.C. Section 1983, 1988 and/or under other statutes and/or
8 laws.

9 JURY TRIAL DEMAND

10 62. Plaintiffs hereby demand a jury trial.

11 STATEMENT OF INTERESTED PARTIES

12 63. Pursuant to Civil L.R. 3-16, the undersigned
13 certifies that as of this date, other than the named
14 parties in this action, there is no such interest to
15 report.

16 PRAYER

17 WHEREFORE, Plaintiffs pray for judgment against Defendants,
18 and each of them, as follows:

- 19 1. General damages to be determined according to proof;
20 2. Special damages, including but not limited to, past,
21 present and/or future wage loss, income and support, medical and
22 related expenses, funeral and burial expenses in amounts to be
23 determined according to proof;
24 3. Attorneys' fees pursuant to statutes;
25 4. Costs of suit;

1 5. Punitive and exemplary damages in amounts to be
2 determined according to proof as to Defendants YOELL, CENTENO
3 and/or DOES 1-100, and/or each of them;
4

5 6. For prejudgment interest as permitted by law;

6 7. For such other and further relief as the Court may deem
7 just and proper.
8

9 DATED: June ___, 2001

10 _____
11 JOHN L. BURRIS
12 Attorney for Plaintiffs
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